IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3827 of 2002

Date of Decision: 24.05.2007

M/s Surinder & Co. ..Appellant

Vs.

State of Haryana & Ors. ..Respondents

Coram: Hon'ble Mr. Justice Vinod K.Sharma

Present: Mr.Mohan Jain Senior Advocate,
with Mr.Dinesh Thakur, Advocate,
for the appellant.

Mr.Amit Kaushik, AAG, Haryana,
for the respondents.

Vinod K.Sharma,J.

Present regular second appeal has been filed against the judgment and decree passed by the learned District Judge, Hisar vide which the appeal filed by the plaintiff-appellant has been ordered to be dismissed on the ground of limitation as the application made for condonation of delay was ordered to be dismissed.

The appeal was filed by the appellant with delay of 22 days

and the reason given for such delay was that the plaintiff-appellant remained ill from 10.10.1998 to 28.10.1998. However, the said plea was rejected on the ground that limitation for filing the appeal was only up to 6.10.1998. It was further observed that the plaintiff firm had two partners and therefore, signatures of one partner was not a ground for condonation of delay. Learned lower appellate court also came to the conclusion that the limitation cannot be given a complete go by and a party is bound to give an explanation. Learned lower appellate court placed reliance on the judgment of Hon'ble Supreme Court in the case of **P.K.Ramachandran Vs. State of Kerala and another AIR 1998 Supreme Court 2276** to come to the conclusion that even if the law of limitation may harshly affect a particular party but it has to be applied with all its rigour. It was further observed that the delay cannot be condoned on equitable grounds and consequently application for condoning the delay was rejected.

Learned senior counsel appearing on behalf of the appellant placed reliance on the judgment of Hon'ble Supreme Court in the case of **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others AIR 1987 SC 1353** to contend that the court should adopt liberal approach in condoning the delay as by condoning the delay the party get right to have their matter adjudicated on merit. Para No.3 of the said judgment reads as under:-

> "3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner."

Learned senior counsel also placed reliance on the judgment of Hon'ble Supreme Court in the case of **Vedabai alias Vaijayantabai Baburao Patil Vs. Shantaram Baburao Patil and others AIR 2001 SC 2582** wherein Hon'ble Supreme Court has been pleased to lay down as under:-

> "5. In exercising discretion under S.5 of the Limitation Act the Courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The Court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression 'sufficient cause', the principle of advancing substantial justice is of prime importance. In our view in this case, the approach of the learned Civil Judge is wholly erroneous and his order is unsustainable. It is evident that the discretion under S.5 of the Limitation Act is exercised by the Civil Judge in contravention of the law laid down by this Court, that the expression 'sufficient cause' should receive liberal construction, in catena of decisions....."

Learned senior counsel for the appellant contended that powers to condone the delay in approaching the court has been conferred

upon the courts to enable them to do substantial justice to the parties by disposing of the matters on merits and therefore, the word 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the courts to apply law in a meaningful manner which subserves the ends of justice as that is the life purpose for the existence of the institution of the courts and therefore, the learned lower appellate court should have adopted a liberal approach. He further contended that by refusing to condone the delay the meritorious claim of the petitioner has to be thrown out at the very threshold and the cause of justice is being defeated.

The contention of the learned counsel for the appellant was that in case the delay is condoned it would merely result in the case to be decided on merit after hearing the parries. By placing reliance on the judgment of Hon'ble Supreme Court in the case of **State of Bihar and others Vs. Kameshwar Prasad Singh and another (2000) 9 SCC 94** learned counsel for the appellant contended that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

On consideration of the arguments raised by the learned counsel for the parties, I consider it an appropriate case where the learned lower appellate court should have condoned the delay as the delay was merely of 22 days and it was proved on record that one of the partner who was pursuing the case was not well from 10.10.1998 to 26.10.1998.

In view of the submissions made above, the substantial

question of law which arises for consideration is:

> "1. Whether the findings recorded by the learned lower appellate court in rejecting the application for condonation of delay is perverse and amounts to defeating the cause of substantial justice?

For the reasons stated above the question of law as framed is answered in favour of the appellant and against the respondent-defendants.

Consequently, this appeal is allowed and the judgment and decree passed by the learned District Judge, Hisar is set aside and the application moved by the appellants under section 5 of the Limitation Act is allowed and the case is remanded back to the learned District Judge, Hisar for consideration of appeal on merits.

May 24,2007 **(Vinod K.Sharma)**
rp **Judge**